

### **REMARKS**

In the subject Office action dated August 11, 2006, claims 1-5, 8-12, and 21-32 were examined. In response thereto, claim 1 is amended, claims 6, 7, 13-32 are canceled, claim 33 is new, and claims 2-5 and 9-12 remain under active prosecution. Applicant asserts that the claims are supported by the Specification as originally filed and do not introduce new subject matter.

Newly submitted claims 23-32 were deemed to have been directed to an invention that is independent or distinct from the invention originally claimed for the following reasons under 35 U.S.C. 121: Group I -- Claims 1-5, 8-12, 21 and 22, deemed drawn to apparatus, classified in class 606, subclass 153, and Group II -- Claims 21-32, drawn to method of making, classified in class 264, subclass 632. Applicants have canceled claims 23-32 to obviate the rejection while retaining the right to pursue examination of these claims in a divisional patent application filed during the pendency of the present application.

In the subject Office action, claims 1-3, and 9-11 were rejected under 35 U.S.C. 102(b) as being anticipated by Huebsch. Claim 5, was rejected under 35 U.S.C. 103(a) as being unpatentable over Huebsch in view of Berg (US 6,712,836). Claims 4, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huebsch in view of Corcoran (US 6,379,368). Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huebsch in view of Barra et al. (US 5,843,088).

Turning to claim 1, Applicants appreciate the explanation given by the Examiner that Huebsch comprises a biofragmentable material. However, Applicants assert that the use of the term “biofragmentable” in the claimed invention differs markedly from the interpretation of “biodegradable” as described in the cited reference of Huebsch. The term “biofragmentable” is described in the present application as facilitating eventual elimination through the gastrointestinal tract. By contrast, the cited reference of Huebsch cites a “biodegradable coating” on an anastomosis device intended for use in arteries and the heart. The cited references teach away from fragmentation. However, to further clarify the distinction of this limitation, Applicants have further amended claim 1 to recite in part that at least a portion of the anastomosis device consists of a polymer biofragmentable material sufficient to facilitating fragmentation of the entire anastomosis device into fragments small enough for disengagement from the two tissue lumens

and elimination through the gastrointestinal tract. In addition, a new dependent claim 33 has been added wherein the anastomosis device consists of a biofragmentable material.

Consequently, Huebsch fails to anticipate the claim as amended. Given the distinct differences in application, Huebsch fails to provide a teaching or motivation to modify the cardiac anastomosis device to biofragment for the different application of gastrointestinal use for elimination. Consequently, the claim is patentable over Huebsch. Reconsideration and allowance of claim 1 is respectfully requested, as well as for claims 2-5, 8-12 and 33 that depend therefrom.

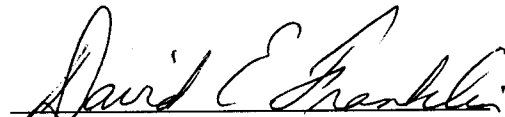
**CONCLUSION**

In light of the amendments and remarks made herein, it is respectfully submitted that the claims currently pending in the present application are now in form for allowance. Accordingly, reconsideration of those claims, as amended herein, is earnestly solicited. Applicant encourages the Examiner to contact their representative David Franklin at 513-651-6856 to answer any questions or concerns.

Since after amendment the claims total 11 with one independent claim, no fees are due. However, the Commissioner for Patents is hereby authorized to charge any deficiency or credit any overpayment of fees to Frost Brown Todd LLC Account No. 06-2226.

Respectfully submitted,


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I hereby certify that a copy of this correspondence is being deposited with the US Patent Office by electronic transmission addressed to MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 this 7th day of November, 2006.

  
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